

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Andrew Ridge	Team: Squad #8	CCRB Case #: 201304734	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 05/25/2013 1:02 AM	Location of Incident: [REDACTED]	Precinct: 25	18 Mo. SOL 11/25/2014	EO SOL 11/25/2014	
Date/Time CV Reported Sat, 05/25/2013 2:06 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 05/31/2013 2:06 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Emerson Charles	28595	950191	HBM IRT
2. POM Alldon Verdejo	14642	951387	HBM IRT
3. An officer			
4. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michael Dangelo	13407	951654	HBM IRT
2. POM Nelson Quinones	14652	943705	025 PCT
3. POM Andre John	26836	948227	PSA 4
4. POM Dung Vo	09862	947867	PSA 7
5. POM Mykhaylo Batsyk	14624	951532	PSA 4
6. SSA Edward Degiacomo	03127	922212	HBM IRT
7. POM John Chiodi	27016	915447	025 PCT
8. POM Josip Sovulj	09274	942571	025 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Alldon Verdejo	Force: PO Alldon Verdejo struck § 87(2)(b) with a baton.	[REDACTED]
B.POM Emerson Charles	Force: PO Emerson Charles used pepper spray against § 87(2)(b) and § 87(2)(b)	[REDACTED]
C. An officer	Force: An officer used physical force against § 87(2)(b)	[REDACTED]
D. Officers	Force: Officers used physical force against § 87(2)(b)	[REDACTED]

Summary of Complaint

On May 25th, 2013, § 87(2)(b) was sitting on a bench in a basketball court, which is adjacent to the NYCHA building at § 87(2)(b) in Manhattan, talking with the mother of his child, § 87(2)(b) and his brother, § 87(2)(b) when § 87(2)(b) got up without saying anything, and walked towards the front of § 87(2)(b). Shortly afterwards, § 87(2)(b) received a call from a friend, § 87(2)(b) who told him that § 87(2)(b) was at the front of § 87(2)(b) and was about to get locked up. When § 87(2)(b) went to check on § 87(2)(b) he encountered Police Officer Alldon Verdejo and Police Officer Emerson Charles, both of the Housing Borough Manhattan Impact Response Team, who were speaking with § 87(2)(b). At some point during § 87(2)(b)'s initial interaction with PO Verdejo and PO Charles, PO Verdejo allegedly struck § 87(2)(b) in the face with a baton (**Allegation A**). While § 87(2)(b) was asking the officers and § 87(2)(b) about what was going on, PO Charles allegedly used pepper spray against § 87(2)(b) and § 87(2)(b) (**Allegation B**). After PO Charles used the pepper-spray, officers allegedly brought § 87(2)(b) to the ground, and afterwards, an officer allegedly stepped on § 87(2)(b) (**Allegation C**). After § 87(2)(b) was pepper sprayed, he began to tussle with an officer. During this tussle, a group of officers brought § 87(2)(b) to the ground (**Allegation D**). After § 87(2)(b) was brought to the ground, an officer stepped on him as he made his way to § 87(2)(b).

Originally, this case was closed through Panel 5D-2014 of the CCRB on July 21st, 2014, after § 87(2)(b) a victim, provided testimony regarding the incident, and ten officers were interviewed. Complainant/victim § 87(2)(b) and victim § 87(2)(b) did not cooperate with the original investigation. Panel 5D-2014 determined that the force allegation made against Police Officer Alldon Verdejo of the Housing Borough Manhattan Impact Response Team, for allegedly striking § 87(2)(b) with a baton was Unfounded. Panel 5D-2014 determined that the force allegation made against PO Charles for allegedly using pepper spray against § 87(2)(b) and § 87(2)(b) was Unsubstantiated. Panel 5D-2014 disposed of a third allegation made against an officer for using physical force against § 87(2)(b) and § 87(2)(b) as Victim Uncooperative. On March 21st, 2017, the CCRB received a reopen request from § 87(2)(b). Even though the CCRB received this reopen request after the case had passed its statute of limitations, because he made a force allegation and because of the criminal exception, his reopen request was granted. The force that § 87(2)(b) testified to on April 17th, 2017, was determined by the investigation to be reasonable, and as such is closed as Exonerated.

Mediation, Civil, and Criminal Histories

- This case was deemed unsuitable for mediation.
- The NYC Office of the Comptroller responded to a request on May 18th, 2017, indicating that no notice of claim has been filed by § 87(2)(b) in regards to this incident (BR 01).
- § 87(2)(b)

Civilian and Officer CCRB Histories

- § 87(2)(b)

Findings and Recommendations

Explanation of Subject Officer Identification

In his telephone statement to the CCRB in 2013, § 87(2)(b) testified that a white male officer tackled him and brought him to the ground (BR04).

In his in-person statement made to the CCRB in 2017, § 87(2)(b) testified that the officer that he was tussling with and who assisted other officers bring him to the ground was a black male in his late 20s, stood 5'9" tall, had a heavy muscular build, weighed around 200lbs, had a buzz cut, and was dressed in a navy blue uniform (BR05).

In her statement made to IAB in 2013, § 87(2)(b) could not describe the officer who brought § 87(2)(b) to the ground (BR06).

In his statement made to the CCRB in 2013, PO Charles, one of the two officers who was interacting with § 87(2)(b) and § 87(2)(b) prior to the arrival of back up, testified that § 87(2)(b) fell to the ground when he pepper-sprayed him (BR07).

In his statement made to the CCRB in 2013, PO Verdejo, the second of the two officers who was interacting with § 87(2)(b) and § 87(2)(b) prior to the arrival of back up, testified that the officer who used force against § 87(2)(b) was a Hispanic male officer from the 25th Precinct who stood 5'6" tall, and weighed 200lbs (BR08).

The Event document generated for this incident only indicates that officers assigned to Sector C from the 25th Precinct were on scene (BR09). Police Officer John Chiodi, one of the two officers working out of Sector C from the 25th Precinct, testified that he did not remember what happened when he arrived on scene (BR10). Police Officer Josip Sovulj, the other officer working out of Sector C from the 25th Precinct, denied responding to the scene (BR11). No other officers on scene identified having any contact with § 87(2)(b) (BR12-17).

During his interview at the CCRB, § 87(2)(b) viewed photos of all of the officers who were on scene and who are still on the police force (BR18). He could not identify any of them.

Based on the inconsistencies in civilian and officer statements regarding who used physical force against § 87(2)(b) the fact the no officer testified to using force against § 87(2)(b) and that during a photo viewing § 87(2)(b) could not identify any of the officers who are still on the force and who had been on scene, Allegation D has been pled against officers.

Allegation A—Force: Police Officer Aldon Verdejo struck § 87(2)(b) with a baton.

When this case was closed in 2014 by Panel 5D-2014, Allegation A was closed as Unfounded. The following is the text from the analysis of the original closing report which was reviewed by Panel 5D-2014:

§ 87(2)(b) alleged that PO Verdejo hit § 87(2)(b)'s face with a baton, causing his mouth to bleed and his tooth to chip. § 87(2)(b) said in a telephone statement to the CCRB that PO Verdejo hit § 87(2)(b) with a baton, but he said in his initial statement to IAB that he did not see an officer use a baton. § 87(2)(b) Leach testified that PO Verdejo drew his baton, but then put it back in his waistband. § 87(2)(b) did not allege that PO Verdejo or any other officer hit him with a baton. § 87(2)(b) testified that his chipped tooth was due to falling after being pepper-sprayed. PO Verdejo testified that he extended his asp, but then retracted it and returned it to belt because he did not feel that § 87(2)(b) posed a physical threat.

§ 87(2)(g)

Allegation B—Force: Police Officer Charles Emerson used pepper spray against § 87(2)(b) and § 87(2)(b)

When this case was closed in 2014 by Panel 5D-2014, Allegation B was closed as Unsubstantiated. The following is the text from the analysis of the original closing report which was reviewed by Panel 5D-2014:

Based on statements by § 87(2)(b) PO Charles, and PO Verdejo, it is undisputed that PO Charles used pepper spray against § 87(2)(b) and § 87(2)(b) § 87(2)(g)

Mr. § 87(2)(b) told IAB that when PO Verdejo asked him for identification. § 87(2)(b) said, "Why are you asking for my ID? Why are you arresting me?" PO Verdejo did not respond. § 87(2)(b) turned around, and PO Charles pepper-sprayed him. At the CCRB, § 87(2)(b) testified that PO Charles and PO Verdejo approached him and told him to put his hands behind his back because he was under arrest. § 87(2)(b) did not comply. The officers asked him several more times. Mr. § 87(2)(b) did not comply, and PO Charles pepper-sprayed him.

§ 87(2)(b) told IAB that when officers told § 87(2)(b) to put his hands behind his back, § 87(2)(b) asked why he was being arrested. PO Verdejo then hit him with a baton and PO Charles pepper-sprayed him. She did not say that PO Charles pepper-sprayed § 87(2)(b) told the CCRB and IAB that PO Verdejo and PO Charles were trying to handcuff § 87(2)(b) but § 87(2)(b) kept pulling his arms away. § 87(2)(b) asked the officers why they were arresting § 87(2)(b) PO Charles told § 87(2)(b) to back up, and he complied. PO Charles then pepper-sprayed § 87(2)(b) and § 87(2)(b)

PO Charles testified that he pepper-sprayed Mr. § 87(2)(b) because § 87(2)(b) was refusing to be handcuffed and said to PO Verdjo, "I can get physical with you." He pepper-sprayed § 87(2)(b) Goauri because Mr. Goauri had just pushed PO Charles and appeared to be about to "charge" at him.

PO Verdejo testified that when he told § 87(2)(b) that he was under arrest, § 87(2)(b) replied, "Don't make me use physical force with you." PO Verdejo tried to handcuff § 87(2)(b) but § 87(2)(b) pulled and pushed PO Verdejo. § 87(2)(b) came up from behind PO Verdejo and said, "Leave my brother alone. Get the fuck away from him." PO Charles pepper-sprayed § 87(2)(b) stood in a fighting stance with his hands raised, almost in fists. § 87(2)(b) shouted and tried to get around § 87(2)(b) to approach the officers. PO Charles then pepper-sprayed § 87(2)(b)

PO D'Angelo saw PO Charles pepper-spray one person, but he did not recall what that person was doing before he was pepper-sprayed.

Patrol Guide Procedure 212-95 (encl. A1-A4) states that an officer may use pepper spray necessary to effect an arrest of a resisting suspect or for self-defense or defense of another from unlawful force.

§ 87(2)(g)

Allegation C—Force: An officer used physical force against § 87(2)(b)

When this case was closed in 2014 by Panel 5D-2014, Allegation C was closed as Victims Uncooperative with both § 87(2)(b) and § 87(2)(b) listed as victims. However, since § 87(2)(b) ultimately provided an in-person statement, allegation D was created to address the force used against him.

In her IAB call, § 87(2)(b) alleged that a male officer took her to the ground and stepped on her chest, and that another officer took § 87(2)(b) to the ground. She did not provide descriptions of the officers. In his telephone statement, § 87(2)(b) stated that a white male officer pushed him and § 87(2)(b) to the ground. PO Verdejo said a Hispanic male officer elbowed § 87(2)(b) and § 87(2)(b) causing them to fall to the ground.

The five white male officers who responded to the incident (PO Chiodi, PO D'Angelo, Sgt. De Giacomo, and PO Batsyk) each denied interacting with § 87(2)(b) or § 87(2)(b). PO Quinones, the only Hispanic male officer who responded, testified that he arrived after § 87(2)(b) was already in handcuffs. § 87(2)(b) did not cooperate in providing sworn statements to the CCRB or viewing photo arrays.

§ 87(2)(g)

Allegation D—Force: Officers used physical force against § 87(2)(b)

During his in-person interview at the CCRB on April 17th, 2017, § 87(2)(b) testified that on May 25th, 2013, he was sitting on a bench in a basketball court, which is adjacent to the NYCHA building at § 87(2)(b) in Manhattan, talking with the mother of his child, § 87(2)(b) and his brother, § 87(2)(b) when § 87(2)(b) got up without saying anything, and walked towards the front of § 87(2)(b). The bench faced away from § 87(2)(b) so § 87(2)(b) and § 87(2)(b) could not see what § 87(2)(b) was doing.

After about five or ten minutes, § 87(2)(b) received a call from a friend, § 87(2)(b) who told him that § 87(2)(b) was at the front of § 87(2)(b) and was about to get locked up. § 87(2)(b) got up from the bench, and began to walk towards the front of § 87(2)(b). As he was approaching the front of the building, § 87(2)(b) saw that two officers, PO Verdejo and PO Charles, were standing between § 87(2)(b) and the entrance of the building on a ramp which runs along the building to the front entrance. § 87(2)(b) did not see PO Verdejo

and PO Charles make physical contact with § 87(2)(b) but when he reached § 87(2)(b) he saw that § 87(2)(b) had a red mark on the right side of his face. § 87(2)(b) asked § 87(2)(b) if he was alright and if the officers had done something to him. § 87(2)(b) did not respond. § 87(2)(b) told PO Verdejo and PO Charles that he lived in the building so that they would not get § 87(2)(b) in trouble for trespassing, and asked the officers what happened. § 87(2)(b) also asked § 87(2)(b) why he had a red mark on his face. Around this time, § 87(2)(b) said something that agitated the officers so much that PO Charles began to pepper-spray § 87(2)(b) and § 87(2)(b) could not remember what § 87(2)(b) said to agitate PO Charles.

After § 87(2)(b) had been pepper-sprayed by PO Charles, he could not see well and stumbled backwards in reaction to the pepper-spray making contact with his face (BR05). As § 87(2)(b) was stumbling back, an officer used both of his hands to take hold of § 87(2)(b)'s arms and shoulders in an attempt to get § 87(2)(b)'s hands behind his back. § 87(2)(b) was attempting to move his face away from the officer who was taking hold of him because he did not want to get pepper-sprayed again. § 87(2)(b) described his struggle with the officer as a "tussle."

At some point while § 87(2)(b) was tussling with the officer who was taking hold of him, § 87(2)(b) felt three to four officers in addition to the officer who had initially made physical contact with him begin to take hold of him all over his body. These officers were also attempting to bring § 87(2)(b)'s hands behind his back. § 87(2)(b) continued to move his face away from the officers, but did not move his body in any other way.

During this struggle, § 87(2)(b) began to regain his vision to a small degree. As he began to be able to see, § 87(2)(b) saw an officer step on § 87(2)(b). In reaction to this, § 87(2)(b) gave up and allowed the officers to bring him to the ground by taking hold of his arms and legs. While the officers were taking hold of him, § 87(2)(b) fell face-forward to the ground, but was able to do so in such a manner that he did not sustain serious injuries to his shoulders. § 87(2)(b) could not further describe what he did physical to ensure officers did not injure his shoulders as he fell.

When § 87(2)(b) and § 87(2)(b) were interacting with the officers, they were on a narrow ramp which ran alongside the building § 87(2)(b) was located on another part of the ramp. While § 87(2)(b) was lying face-first on the ground, an officer was running towards § 87(2)(b). On his way to § 87(2)(b) the officer stepped on § 87(2)(b). § 87(2)(b) believed that the officer who was running was running towards § 87(2)(b) because the officers may have been having a hard time controlling him because § 87(2)(b) has a heavy build. § 87(2)(b) believed the officer stepped on him in part because the ramp was narrow, and that stepping on him was not an excessive use of force because the officer was trying to get past him.

During his interview at the CCRB, § 87(2)(b) viewed photos of all of the officers who were on scene and who are still on the police force (BR18). He could not identify any of them.

In 2013, § 87(2)(b) testified to IAB that at some point during the incident, an officer brought § 87(2)(b) to the ground (BR20).

In 2013, § 87(2)(b) testified as a victim in regards to this incident (BR20). § 87(2)(b) made no mention of any force being used against § 87(2)(b).

In 2017, § 87(2)(b) a friend of § 87(2)(b) testified that he was coming home when he saw PO Charles and PO Verdejo speaking with § 87(2)(b) and § 87(2)(b) (BR21). When PO Charles pepper-sprayed § 87(2)(b) pepper-spray also made contact with § 87(2)(b)'s face. As soon as he was pepper-sprayed, § 87(2)(b) began to leave. As he was leaving, § 87(2)(b) could see § 87(2)(b) and § 87(2)(b) being brought to a police vehicle. § 87(2)(b) could not remember anything else about the incident. § 87(2)(b) did not wish to make a complaint against PO Charles for pepper-spraying him.

In 2014, ten officers who were on scene were interviewed in regards to this incident.

PO Charles testified that § 87(2)(b) fell to the ground after he discharged pepper-spray in his face (BR07). PO Charles had discharged the pepper-spray because after PO Verdejo placed § 87(2)(b) in handcuffs, § 87(2)(b) began to approach PO Charles at a brisk pace.

PO Verdejo testified that after PO Charles pepper-sprayed § 87(2)(b) began to push past § 87(2)(b) in order to reach PO Verdejo and PO Charles (BR08). At this time, PO Chiodi and PO Sovulj arrived on scene. PO Verdejo said "Get that guy," and pointed to § 87(2)(b). A male Hispanic officer from the 25th Precinct hit the side of § 87(2)(b)'s face with his elbow, causing § 87(2)(b) to fall to the ground.

PO Vo and PO Batsyk testified that they observed no officer use any force of any kind when they arrived on scene (BR12, BR17). PO Batsyk testified that he observed that either § 87(2)(b) or § 87(2)(b) was on the ground when he arrived, but that he did not observe how that individual came to be on the ground.

Sgt. De Giacomo, PO Quinones, and PO John all testified that § 87(2)(b) and § 87(2)(b) had either already been restrained or had been removed from the scene by the time that they arrived (BR14, BR13, BR 16).

PO D'Angelo could not recall any officer using any force, and PO Chiodi could not recall the incident (BR15, BR10).

PO Sovulj testified that he was at no point on scene (BR11).

Penal Law 35.30 states that "A police officer ... in the course of effecting or attempting to effect an arrest ... of a person whom he or she reasonably believes to have committed an offense, may use physical force when and to the extent he or she reasonably believes such to be necessary to effect the arrestor in self-defense (BR22)."

§ 87(2)(g)

Squad: 8

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date